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Before the
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	
Implementation of the Subscriber Carrier Selection Changes Provisions Of the Telecommunications Act of 1996	**CC Docket No. 94-129**
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	

COMMENTS OF THE

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Pursuant to the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits the following comments in response to the proposal for an industry-funded third party liability administrator ("TPA") for slamming complaints filed March 30, 1999, by MCI and others in the above-captioned proceeding and noticed April 8, 1999 [DA 99-683] for comment.

I. DISCUSSION

In general, NARUC is concerned the TPA proposal ignores the anti-slamming laws that have been adopted by many states and that state enforcement efforts against slamming might be hampered by the one-size-fits-all approach embraced by the TPA proposal. We question some aspects of the proposed TPA dispute resolution process and whether consumers will have confidence in a TPA that is run by the industry. More specific points are outlined below:

A. State anti-slamming protections.

The TPA proposal does not include any effort to take into account state anti-slamming rules and laws that provide more protection and rights for consumers than do the FCC's. For instance, if a Montana consumer who was slammed called the TPA, she would not be informed

that Montana law and Public Service Commission rule provide that she does not have to pay the slammer's bill for a period of up to six months after the slam occurred if the slammer cannot prove it obtained prior valid authorization. Instead, the TPA will enforce only the FCC rules.

The TPA proposal contemplates that customers' local exchange and interexchange carriers participating in the TPA process will refer all their customers who claim they have been slammed to the TPA when their customers might be better served if their state laws and rules were enforced. We do not consider "administrative simplicity" sufficient cause for not enforcing state remedies. All industries must deal with variations in state commercial and consumer law. Multi-state utilities now must and do track variations in state tariffs, consumer rules and other policies. At the very least, consumers who call the TPA should be informed up front that their state regulatory commissions or attorney general offices may enforce state laws or rules that would result in remedies that are more favorable to consumers than what the TPA offers.

Finally, we are concerned that states may encounter difficulty enforcing state slamming laws if a state agency finds a consumer was slammed after the TPA determined no slam occurred.

B. Three-month limit on compensation.

The TPA proposal to limit customer proxy payments to the most recent three months of usage from the date of the customer complaint to the TPA unfairly disadvantages slammed customers who are billed late by the unauthorized carrier or who fail to notice the unauthorized carrier's charges on their bills until after three months of billing. It is not unusual for an unauthorized carrier's first bill to show up in a consumer's mailbox two or three months or more after the unauthorized switch occurred. In the TPA proposal, the TPA would not be required to accept these late-billed slamming complaints, but could "at its discretion. "

It also frequently happens that slammed consumers, particularly elderly or low-usage toll consumers, do not notice they have been slammed for some months after the unauthorized carrier's charges begin to be billed to them. While consumers are responsible for reviewing their phone bills and detecting errors, they should not be penalized for failing to immediately identify a change in carrier when they have no reason to suspect such a change has occurred because they did not authorize a switch. Today's phone bills are not models of clarity and many customers, used to trusting their phone bills, still look only for the bottom line on the first page without venturing to the succeeding pages.

The fear that widespread consumer fraud will result if slammed consumers are entitled to a reasonable amount of time to dispute the slamming carrier's charges and receive compensation for them is unfounded. There is no evidence to suggest that consumers will wait to be slammed and then not report it for months, hoping for their opportunity to take advantage of reduced-cost or even free phone service. To the contrary, it is the slamming carriers in the industry that are taking advantage of consumers by using deceptive marketing practices to slam them in ever-growing numbers, secure in the knowledge they will profit because so many consumers will pay their bills, either out of ignorance or because they do not want to take the time to dispute the charges. In the unlikely event that consumers purposely delay reporting their slams, then the principal losers are the slamming carriers, which is as it should be.

We urge rejection of a specified time limit on consumer compensation.

*C. **Exclusion of certain complaints from TPA resolution.***

According to the TPA proposal, the TPA would exclude complaints that a carrier's marketing information is misleading or that a carrier misrepresented its products to the consumer when there is no claim of unauthorized conversion. It is not clear from the proposal if TPA dispute resolution would be available in cases where the customer authorized a carrier change, but claims he or she was misled or deceived regarding the nature of the authorized carrier's service. Those cases should not be excluded. There are many examples of slamming complaints in which the consumer might have authorized the action taken by the carrier, but clearly did not give informed consent because the carrier used deceptive telemarketing to obtain the authorization. States have experience with slammers who submit taped verifications of alleged customer authorizations that might meet the FCC or state verification requirements, but whose deceptive telemarketing pitch prior to the verification is not captured on tape. One common example of deceptive telemarketing used by slammers occurs when the interexchange carrier's telemarketer identifies himself as a representative of the customer's local exchange company and continues that misrepresentation throughout the pitch, even in the face of customer questions. Another recent deception is to misrepresent the purpose of the telemarketing call, such as when the telemarketer tells the customer that he is calling to offer "slamming protection. "

In addition, a TPA should not exclude consideration of "soft slam" complaints and the subsequent casual billing complaints that often occur as the result of an unauthorized carrier change from the switchless reseller to the underlying facilities-based carrier. We assume for purposes of assigning liability that any entity resolving consumer slamming complaints treats soft

slams in the same manner as any other slam. Customer crediting by carriers. Under the proposal, crediting of a slammed customer's account by carriers, including local exchange carriers, could occur only pursuant to TPA direction or the FCC's rules. NARUC opposes this provision because it appears to preclude state regulatory and enforcement agencies engaged in enforcing state slamming laws from directing carriers to issue credits or refunds to slammed customers.

D. ***Dispute resolution process.***

NARUC is concerned that under the TPA proposal, the TPA would not be required to contact the customer if it appears there is valid FCC-authorized verification, but only would attempt to contact the customer "as a general rule." Customers should be afforded the opportunity to rebut the accused carrier's alleged verification before a slamming claim is denied. In addition, there must be a clear fall-back position for the consumer (e. g. , an appeal to the state commission or attorney general) for customers who are dissatisfied with the decision of the TPA.

The TPA proposal includes a provision that if a copy of the actual verification record is provided to the TPA by the accused carrier, the TPA will presume no slam occurred. We request clarification that receipt of the verification tape or document will be followed by an investigation by the TPA to determine if the verification record meets the FCC's requirements. Under the proposal, the TPA bases its decision regarding the amount to be credited to the slammed customer on records provided by the unauthorized carrier. In state commissions' experience, it sometimes happens that unauthorized carriers' records of amounts owed do not correspond to the amounts actually billed by the unauthorized carrier to the customer. Therefore, the crediting procedure envisioned in the TPA proposal will not always settle the customer's complaint if the customer's bill reflects a different amount billed by the slamming carrier. Also, the unauthorized carrier's account record probably does not include late payment charges that may have been assessed to the customer by the LEC on the slamming carrier's balance or various taxes or fees that are based on a percentage of the total bill by the LEC.

E. Cost recovery.

The TPA proposal does not include an estimate of the cost of creating and operating the TPA system. The FCC and state enforcement agencies receive thousands of slamming complaints each year and carriers probably receive thousands more. Resolution of slamming complaints as proposed by the TPA requires at least one contact with at least four different entities -- the consumer, the unauthorized carrier, the authorized carrier and the executing carrier -

- and would involve a time- and resource-intensive process. The creation and operation of an effective TPA would be very expensive. The industry will want to recover its TPA costs. NARUC does not believe these costs should be passed through by the industry to consumers, who are the victims of slamming.

F. ***Prompt resolution and customer service.***

In order to provide effective complaint resolution, turnaround time must be as short as possible. It is not clear from the proposal whether the TPA could ensure prompt responses from authorized and unauthorized carriers. If a TPA is created, state commissions recommend strict standards for the call center responsible for receiving consumers' slamming complaints. We hear regularly from consumers about poor service at utility call centers in general. These complaints typically include: excessively long periods of time spent on hold by callers; interminable voice response menus to nowhere combined with inability to talk to a live person; and inaccurate information provided by customer service representatives to callers.

G. *Consumer confidence in an industry-sponsored process.*

We recognize the FCC invited the industry to propose a TPA to handle slamming complaints and enforce the FCC's slamming rules; however, FCC rule enforcement remains the responsibility of the FCC. Providing for an industry-operated TPA, with the FCC given only a non-voting seat on the TPA board, leaves the responsibility for slamming enforcement with the industry. We wonder if consumers will trust the results of a slamming complaint resolution process that is run by the industry, or whether they might view the TPA as "the fox guarding the henhouse. " If the FCC is willing to cede its regulatory responsibilities to the industry -- a questionable prospect in itself -- at the very least it should demand increased regulatory or consumer advocate participation in the board, rather than settling for a mere advisory capacity.

II. CONCLUSION

NARUC respectfully requests the FCC carefully consider the forgoing positions and suggested clarifications before taking final action on this proposal.

Respectfully submitted,

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